

# PESTICIDE GENERAL PERMIT 2013 REISSUANCE TECHNICAL ADVISORY COMMITTEE (TAC)

## DRAFT MEETING NOTES TAC MEETING – THURSDAY, JUNE 28, 2012 DEQ PIEDMONT REGIONAL OFFICE TRAINING ROOM

### Meeting Attendees

<i><b>TAC MEMBERS</b></i>	<i><b>TECHNICAL SUPPORT</b></i>	<i><b>SUPPORT STAFF</b></i>
Charles Abadam – Suffolk Mosquito Control	Fred Cunningham – DEQ	Elleanore Daub - DEQ
Randy Buchanan – Virginia Mosquito Control Association	Amy Ewing – DGIF	Bill Norris - DEQ
Bill Gillette – Rock Springs Forestry, Inc.	Liza Fleeson – VDACS	Carl Thomas - DEQ
Ron Harris – Newport News Waterworks	Todd Groh - DOF	Burt Tuxford - DEQ
Lloyd Hipkins – Virginia Tech	<i><b>INTERESTED PUBLIC</b></i>	
Pat Hipkins – Virginia Cooperative Extension		
Shannon Junior – SOLITUDE Lake Management		
Whitney Katchmark – Hampton Roads Planning District Commission		
Blair Krusz - Virginia Agribusiness Council - Alternate for Katie Frazier		
Joe Simmons – Chesapeake Mosquito Control Commission		
Mark Vandevender – Spotsylvania County		
Tom Warmuth – Cygnet Enterprises, Inc.		

NOTE: The following TAC members were absent from the meeting: Katie Frazier – Virginia Agribusiness Council; Butch Harrison – American Forestry Management; Kevin Heffernan – DCR – Natural Heritage Program; Sarah Miller – SePRO Corporation; C.B. Umphlette, Jr. – City of Portsmouth; Alan Wood – American Electric Power

### 1. Welcome & Introductions (Bill Norris):

Bill Norris, Regulatory Analyst with the DEQ Office of Regulatory Affairs welcomed all of the meeting participants. He asked for introductions of all of the members of the Pesticide General Permit 2013 Reissuance Technical Advisory Committee and members of the "Interested Public".

### 2. Responsibilities of the TAC - Guidelines (Bill Norris):

Bill Norris noted that materials had been distributed to the TAC electronically prior to the meeting. These included the following:

- 9VAC25-800 - Pesticide General Permit - Current language;
- EPA - Pesticide General Permit;
- Notice of Intended Regulatory Action (NOIRA) for Amendment and Reissuance of General Permit Regulation;
- Summary of NOIRA Comments; &

- Technical Advisory Committee Guidelines

He noted that there were several copies of those materials available if any in attendance needed them. He also noted that there was a handout that included two comments submitted by two members of the TAC who were unable to attend today's meeting. These will be discussed later in today's meeting.

He briefly reviewed the "guidelines" document and noted the following:

- "The purpose of the proposed action is to amend and reissue a VPDES general permit for discharges from pesticides applied directly to surface waters to control pests, and/or applied to control pests that are present in or over, including near, surface waters. This permit expires on December 31, 2013 and needs to be reissued so pesticide operators can continue to have coverage in order to apply chemical pesticides that leave a residue in water, and all biological pesticide applications that are made in or over, including near, surface waters in Virginia. This regulatory action is also needed in order to incorporate appropriate changes from the federal NPDES Pesticide General Permit."
- "The primary function of the advisory committee is to develop recommended general permit regulation amendment language for Department consideration through the collaborative approach or regulatory negotiation and consensus."
- "All meetings of the TAC are public meetings."
- "The goal is to reach consensus where possible."
- Two meetings of the TAC are currently planned. The second meeting of the TAC is scheduled for Thursday, August 23rd here at the DEQ Piedmont Regional Office.

### **3. DEQ Update Since We Last Met - DEQ Timeline for This Reissuance (Elleanore Daub):**

Elleanore Daub with DEQ's Office of Water Permit and Compliance Assistance, brought the group up to date on the status of the General Permit and the actions taken by DEQ since the last meeting of the first Technical Advisory Committee that helped to develop the 2-Year General Permit and provided a brief description of the current timeline envisioned for the current general permit regulatory action. She noted the following:

- Since we last met the Department has gotten some questions and comments related to the regulation but it is our impression that it is going okay.
- We have had some clarifications that we have been able to figure out over the last year and a half that we have been able to share with the affected stakeholders. We can discuss those areas as we get to those sections of the regulation later in our discussions.
- We have also been out talking to stakeholder groups and doing a lot of outreach about the program and the regulation and requirements.
- The Cooperative Extension folks have been a big help in getting the information out to the stakeholders.
- Related to our timeline: we have taken the first step in the process through the issuance of a NOIRA and the receipt of comments. The next step was the formation of this Technical Advisory Committee to gain input directly from a stakeholder group on amendments to the general permit.
- The next step will be the development of amendments to the general permit based on the

discussions and recommendations of this group and based on some of the items in the final EPA General Permit that are appropriate for inclusion in the draft amendments for consideration by the Board.

- The timing of submittal to the Board for consideration will be dependent on the number of meetings of this group and the revisions that are made, but maybe March or June of 2013, maybe sooner.
- We are looking for an effective date of December 2013 for the amended general permit.

Discussions included the following:

- *Staff Comment: Only aware of a few complaints that have been received related to the program. None of them related to an "adverse impact" of any kind but more associated with mosquito spraying close to houses. The Department has informed the homeowner that there is a requirement under this permit. In one case, we did contact the locality and talked to them - they were aware of the requirements. Typically the locality is working with the homeowner to resolve their issues. The Regions are getting some calls related to the program. They are being referred to information on the web-page. It has been pretty quiet. Initially we got a number of calls related to the PDMPs until people got familiar with those. We have the template on the web-page that seems to be helpful. All the calls are coming into the Central Office. We originally thought that we might be overwhelmed with calls but that has not been the case. There has been some traffic but it has not been overwhelming. People are just trying to do the right things and meet the terms of the permit. Most of the questions are related to the "applicators" and the "operators" and who does what? - Who is responsible for what? There has been some back and forth communications with Forestry about "mature stands" versus "juvenile stands"; "where they can see the water"; "where they can't see the water" to come to some decisions about how they are handled? With people who are doing work in multiple states there is typically some confusion since there are slightly differing requirements for the programs. We have gotten a number of calls related to the differences in requirements in different states.*
- The worst part of the process has been trying to explain the requirements of the general permit to everyone. Did a very active campaign with letters and phone calls to clients explaining the requirements. Doing work in multiple states with different requirements has been frustrating to explain to clients. Most of the confusion regarding the program is related to IPM and whose responsibility it was to implement IPM.
- From the meetings that Virginia Tech and Extension put on it was evident that a lot of people came into the program really misinformed. When they realize that they are already complying with so much of this, already by complying with VDACS, it allays a lot of their fears.
- People assume that this is a VDACS permit since that is where pesticides are regulated. The other big misconception is that they have to apply for the permit. Those inquiries are referred to DEQ, because it is not under VDACS authority.
- *Staff Comment: It doesn't appear from looking at the EPA NOI website that there are that many people registered under the program.*
- The DEQ program staff has done a really good job of coming to meetings of applicators that could be impacted and explaining the program requirements. They have also attended meetings of VDACS and Extension personnel to explain the requirements of the program. That outreach has been very helpful. The website information has also been very useful.

- The questions that are being received by Extension are from folks who want to take "surface water" literally. Looking at the definition of "surface water", the ditch may be dry but it may still have to count in the calculations. Is that correct? *Staff response: The fact sheet actually says that in your acreage calculations that if the ditch is dry that you don't have to count it, but the ditch may be wet at other times so it might be smart to consider it.* Some folks try to time their applications so that the ditch is dry so they don't have to count it. *Staff Response: If they are applying when the ditch is dry, then it can be considered a "terrestrial application" and not a water application. So they don't need to be covered under this GP at that time.*
- At a recent EPA meeting (June 19th), it was announced that as of the 18th that a total of 316 NOIs had been received. The majority were for mosquito and weed control. As of that date that have been no law suits in the states that they cover and they have not conducted any inspections.

#### **4. PGP Regulation Review by Section - Comparison to EPA General Permit (Fred Cunningham; Eleanore Daub; Burt Tuxford; Carl Thomas) - Discussion Topic: Definitions (DEQ - 9VAC25-800-10/EPA GP - Appendix A):**

Program staff started a review of the DEQ PGP Regulation and a comparison of the DEQ GP to the EPA GP. Staff noted that they had done a comparison of the two general permits and that there were a number of changes in the EPA GP that need to be considered by the group and staff for inclusion in the amendments to the DEQ GP. EPA made a lot of changes in their pesticide specific definitions but their regular definitions have remained the same. It was noted that the DEQ GP does not have to mirror the EPA GP, but that we also have to send our GP to EPA for their approval. The Section-by-Section review included the following:

DEQ GP - "Action threshold" means the point at which pest populations or environmental conditions can no longer be tolerated necessitating that pest control action be taken based on economic, human health, aesthetic, or other effects. Sighting a single pest does not always mean control is needed. Action thresholds help determine both the need for control actions and the proper timing of such actions. Action thresholds are site specific and part of integrated pest management decisions.	EPA GP - Action Threshold - the point at which pest populations or environmental conditions necessitate that pest control action be taken based on economic, human health, aesthetic, or other effects. An action threshold may be based on current and/or past environmental factors that are or have been demonstrated to be conducive to pest emergence and/or growth, as well as past and/or current pest presence. Action thresholds are those conditions that indicate both the need for control actions and the proper timing of such actions.
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- EPA's definition of "action threshold" does not include the phrase "can no longer be tolerated". The last part of the definition is also different than DEQ's.
- How different can we be before we get push-back from EPA? *Staff Response: We can be as different as we want to be on those definitions that are regulation specific but for those that are related to the VPDES regulation we have to be consistent.*

DEQ GP - "Active ingredient" means any substance...meaning of § 2 (a) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 USC § 136 et seq.)	Active Ingredient - any substance...meaning of FIFRA sec. 2 (a). [40 CFR 152.3]...[40 CFR 174.3]
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- The only difference is in the references to FIFRA - It was suggested that the different wording was appropriate since the EPA GP is referring to the Federal FIFRA section and the DEQ GP is referring to the Virginia FIFRA requirements.

<p>DEQ GP - "Adverse incident" means an incident that the operator observes upon inspection or of which otherwise becomes aware, in which there is evidence that:</p> <ol style="list-style-type: none"> <li>1. A person or nontarget organism has likely been exposed to a pesticide residue; and</li> <li>2. The person or nontarget organism suffered a toxic or adverse effect.</li> </ol>	<p>EPA GP - Adverse Incident - means an unusual or unexpected incident that an Operator has observed upon inspection or of which the Operator otherwise become aware, in which:</p> <ol style="list-style-type: none"> <li>1. There is evidence that a person or non-target organism has likely been exposed to a pesticide residue, and</li> <li>2. The person or non-target organism suffered a toxic or adverse effect.</li> </ol>
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<p>DEQ GP - "The phrase "toxic or adverse effects" includes effects that occur within surface waters on nontarget plants, fish, or wildlife that are unusual or unexpected as a result of exposure to a pesticide residue and may include any of the following:</p> <ol style="list-style-type: none"> <li>1. Distressed or dead juvenile and small fishes;</li> <li>2. Washed up or floating fish;</li> <li>3. Fish swimming abnormally or erratically;</li> <li>4. Fish lying lethargically at water surface or in shallow water;</li> <li>5. Fish that are listless or nonresponsive to disturbance;</li> <li>6. Stunting, wilting, or desiccation of nontarget submerged or emergent aquatic plants; and</li> <li>7. Other dead or visibly distressed nontarget aquatic or semi-aquatic organisms (amphibians, turtles, invertebrates, etc.)</li> </ol>	<p>EPA GP - "The phrase toxic or adverse effects includes effects that occur within Waters of the United States on non-target plants, fish or wildlife that are unusual or unexpected (e.g. effects are to organisms not otherwise described on the pesticide product label or otherwise not expected to be present) as a result of exposure to a pesticide residue, and may include:</p> <ol style="list-style-type: none"> <li>1. Distressed or dead juvenile and small fishes</li> <li>2. Washed up or floating fish</li> <li>3. Fish swimming abnormally or erratically</li> <li>4. Fish lying lethargically at water surface or in shallow water</li> <li>5. Fish that are listless or nonresponsive to disturbance</li> <li>6. Stunting, wilting, or desiccation of nontarget submerged or emergent aquatic plants</li> <li>7. Other dead or visibly distressed non-target aquatic organisms (amphibians, turtles, invertebrates, etc.)</li> </ol>
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<p>DEQ GP - "The phrase "toxic or adverse effects" also includes any adverse effects to humans (e.g., skin rashes), domesticated animals or wildlife (e.g., vomiting, lethargy) that occur either directly or indirectly from a discharge to surface waters that are temporally and spatially related to exposure to a pesticide residue."</p>	<p>EPA GP - The phrase, toxic or adverse effects, also includes any adverse effects to humans (e.g. skin rashes) or domesticated animals that occur either from direct contact with or as a secondary effect from a discharge (e.g., sickness from consumption of plants or animals containing pesticides) to Waters of the United States that are temporally and spatially related to exposure to a pesticide residue (e.g., vomiting, lethargy).</p>
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<p>EPA GP (Not in DEQ GP) - Annual Treatment Area Threshold - an area (in acres) or linear distance (in miles) in a calendar year to which a Decision-maker is authorizing and/or performing pesticide applications in that area for activities covered under this permit.</p> <p>For calculating annual treatment areas for Mosquitoes and Other Flying Insect Pest Control and Forest Canopy Pest for comparing with any threshold in Table 1-1, count each pesticide activity to a treatment area (i.e. that area where a pesticide application is intended to provide pesticidal benefits within the pest management area) as a separate area treated. For example, applying pesticides three times a year to the same 3,000 acre site should be counted as 9,000 acres of treatment area for purposes of determining if such an application exceeds an annual treatment area threshold. The treatment area for these two pesticide use patterns is additive over the calendar year.</p> <p>For calculating annual treatment areas for Weed and Algae Control and Animal Pest Control for comparing with any threshold in Table 1-1, calculations should include either the linear extent of or the surface area of waters for applications made to Waters of the United States or at water's edge adjacent to Waters of the United States. For calculating the annual treatment area, count each treatment area only once, regardless of the number of pesticide application activities performed on that area in a given year. Also, for linear features (e.g., a canal or ditch), use the length of the linear feature whether treating in or adjacent to the feature, regardless of the number of applications made to that feature during the calendar year. For example, whether treating the bank on one side of a ten0mile long ditch, banks on both sides of the ditch, and/or water in that ditch, the total treatment area is ten miles for purposes of determining if an NOI is required to be submitted. Additionally, if the same 10 miles is treated more than once in a calendar year, the total area treated is still 10 miles for purposes of comparing with any threshold in Table 1-1. The treatment area for these two pesticide use patterns is not additive over the calendar year.</p>	
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- This is a new definition in the EPA GP.
- There have been some questions as to whether the time period is a calendar year. *Staff Response: Our Table 1 states that it is an annual threshold. We left it up to the applicator; the only requirement was that it had to be an annual threshold.*
- That is the biggest difference between the states, for some states it is cumulative for others it is not. In some states you can treat the same body of water multiple times and it still would only count once. *Staff response: This is something that we may want to look at. There are currently two different ways of calculating the threshold which can be confusing. It might make it clearer if there was only one approved method of calculating your threshold numbers.* There are instances for larger bodies of water where you don't know how many times you will need to treat or can't anticipate the number of treatments needed for the same body of water or the same area of a body of water. A lot of the treatment applications would be serial applications.
- For Forestry we have a similar situation, if you are spraying an area of cutover of 100 acres that contains a small area of potential wetlands (2 acres) and the rest of the site is uplands; do you count as 100 acres or as 2 acres? *Staff Response: That should probably be counted as just 2 acres.* During the last TAC process the discussion was that it should be counted as 100 acres of treatment. *Staff Response: We have learned a lot about the forestry industry and management process since development of the 2-Year GP. We do want to clarify the forestry requirements as we go through this reissuance process. The forestry requirements need to be reevaluated.* This is not a big issue now since the permit doesn't cost anything, but if the program ever gets to the point of having a cost for the permit; required monitoring and reporting then it could become an issue. In the future, if you potentially have to do more reporting, it could become an issue - right now we are monitoring nothing. We may as well realize that if this program stays in effect that ultimately we will have to start reporting acreages and applications and locations and everything. That is when "how you calculate everything" will be important to know and understand. It potentially could become more complicated and costly. *Staff Response: In looking at a summary of what other states did to implement the requirements of the program, the states have done everything from what we have done up to what EPA has done and everything in between. It is evident that there is a hodge-podge of requirements. To require anything over what we are currently requiring would be a mess.*
- Do we have the capability to change our calculations to a "one-time area" calculation? *Staff Response: We need to talk about that but that is being considered as a proposed amendment.* A ditch line type calculation would be good, where you only count it once. It would make our calculation methods consistent. If you are treating a lake then you would count the acreage one time only. This approach could also be complicated especially if you have a 100 acre lake that for one type of problem you might be only treating a 2 acre cove while for other problems you may need to treat the whole lake. You wouldn't necessarily be able to make that determination at the beginning of the process. A concern was raised that taking this approach would defeat the purpose of the regulation if you only count it once - the purpose is to track the number of applications and the pesticide residue left in order to minimize pesticide discharges. Can understand that if I treat this ditch only counting it once, but if you treat the same ditch multiple times then you are potentially increasing the pesticide residue. If you take this approach it defeats the purpose of what this is intended to do, whether we agree or not with the purpose or not. *Staff Response: Are we currently tracking that? Yes, through the VDACS reporting requirements.* If we change how we are calculating the thresholds and only count a site once no

matter how many times it is actually treated, then it would defeat the intent of what this program is trying to do which is to find out how much you are actually treating and if you exceed a threshold then you have to do reporting. *Staff Comment: Do you think that if we make this change then this will change the number of permittees that will have to keep the PDMP?* Unsure, would have to defer to the industry representatives and applicators. There was some agreement to this concern - would love to say that we could count a treatment area only once whether we treat the same area multiple times but understand that the purpose of the law is to minimize pesticide discharges, i.e., minimizing the number of applications at a site. Most of the larger users, i.e., VDOT, etc. are going to have a PDMP whether an application at a site is counted only once or for every application. The actual pesticide usage data is currently captured in the VDACS usage reporting requirements. You have to have a fairly large facility (large business) to require a PDMP. *Staff Response: EPA did seem to go to larger entities for required submission of PDMPs and NOIs.*

- If you are treating a forest tract one time for weeds and then another time for mosquito control, they are entirely different applications and should be treated differently and have different requirements and should be counted twice. But if it is a prescription for mosquito control that requires a certain number of applications over a certain amount of time then it should only be counted once. Because they are going to keep a record of every application they make.
- Whatever we do, we should be consistent. We either count everything once or each application is counted separately. It is confusing the way EPA did it.
- It was noted that localities had different opinions on whether to count a treated ditch line once or for every application. Records are currently kept for VDACS. *Staff Comment: For local governments, EPA doesn't count larvicide applications in the calculations of acreage. Larvicide applications are not counted in your "Exceedance of Threshold" calculations. The fact that you are applying larvicides means that you are covered under the permit. Presently larvicide applications are counted towards your "exceedance of threshold" calculations in the Virginia General Permit. EPA has only carved out the "larvicide applications" for local governments - all other large entities (mosquito control districts, etc.) have to include "larvicide applications" in their calculations and are required to have a PDMP and to register under EPA's permit.*

DEQ GP - Operators applying pesticides are required to maintain a pesticide discharge management plan (PDMP) if they exceed the annual treatment thresholds...	EPA GP - Which Decision-makers Must Submit NOIs?/For Which Pesticide Application Activities?
Mosquitoes and Other Flying Insect Pests: 6,400 acres of treatment area ( <i>annual threshold</i> )	Mosquito and Other Flying Insect Pest Control: Local governments or other entities that exceed the annual treatment area threshold identified here/Adulticide treatment if more than 6,400 acres during a calendar year.

- A clarification of the record keeping requirements was requested. How long under this permit do records have to be retained? *Staff Response: For DEQ purposes, you keep your records for three years after the permit expires. For VDACS the requirement is two years. This is a delegated program from EPA; the only requirement is what is in the permit. There are differences between the record retention requirements for VDACS and DEQ.*
- It was noted that the threshold requirements for the North Carolina General Permit were different than those in the Virginia GP. That annual threshold for the "Mosquitoes and Other Flying Insect" category is "15,000 acres of treatment area (adulticide applications only) - multiple applications to the same area are added together only for mosquito and other flying insect control. It was suggested that this was based primarily on a difference in definitions

related to "waters of the state" contained in the general permits.

<p>DEQ GP - "Surface waters" means:</p> <ol style="list-style-type: none"> <li>1. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;</li> <li>2. All interstate waters, including interstate wetlands;</li> <li>3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters: <ol style="list-style-type: none"> <li>a. That are or could be used by interstate or foreign travelers for recreational or other purposes;</li> <li>b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or</li> <li>c. That are used or could be used for industrial purposes by industries in interstate commerce.</li> </ol> </li> <li>4. All impoundments of waters otherwise defined as surface waters under this definition;</li> <li>5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;</li> <li>6. The territorial sea, and</li> <li>7. Wetlands adjacent to waters, other than waters that are themselves wetlands, identified in subdivisions 1 through 6 of this definition.</li> </ol> <p>Surface waters do not include waste treatment systems, including treatment ponds, or lagoons designed to meet the requirements of the Clean Water Act (CWA) and the law. Surface waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other agency, for the purposes of the CWA, the final authority regarding the CWA jurisdiction remains with the EPA.</p>	<p>NC GP - "Waters of the State" ...means:</p> <p>Any stream, river, brook, swamp, lake, sound, tidal estuary, bay, creek, reservoir, waterway or other body of water or accumulations of water whether surface or underground, public or private, or natural or artificial, that is contained in, flows through, or borders upon any portion of this State, including any portion of the Atlantic Ocean over which the State has jurisdiction.</p>	<p>EPA GP - "Waters of the United States"...</p> <ol style="list-style-type: none"> <li>(a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including waters which are subject to the ebb and flow of the tide;</li> <li>(b) All interstate waters, including interstate "wetlands;"</li> <li>(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands", sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters: <ol style="list-style-type: none"> <li>(1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;</li> <li>(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or</li> <li>(3) Which are used or could be used for industrial purposes by industries in interstate commerce;</li> </ol> </li> <li>(d) All impoundments of waters otherwise defined as Waters of the United States under this definition;</li> <li>(e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;</li> <li>(f) The territorial sea; and</li> <li>(g) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition. [40 CFR 230.3 (s)]</li> </ol> <p>Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not Waters of the United States. Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purpose of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA. [40 CFR 122.2]...</p>
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- It was recommended that the annual threshold limits contained in the original Virginia GP should be retained.
- It was suggested that for the purposes of calculation of treatment area that only the acreage of the "intended treatment area" should be considered.
- *Staff asked for a clarification from the stakeholders of who else does mosquito applications besides the cities, mostly in the Tidewater area of the state.* There are a number of private



organizations that are doing "mosquito control", basically using barrier applications, i.e., for private homes and lawns; VDOT also sprays for "mosquito control" around their rest areas.

- Mosquito control is a huge program with the military. They have their own treatment program and their own certified applicators.
- The calculations for "Annual Treatment Area Thresholds" need to be consistent. Is it a linear or an area calculation?

<p>DEQ - Table 1 - Annual Treatment Area Thresholds - Footnote 1: Calculations include the area of applications made to: (i) surface waters and (ii) conveyances with a hydrologic surface connection to surface waters at the time of pesticide application. <b>For calculating annual treatment area totals, count each pesticide application activity as a separate activity. For example, applying pesticides twice a year to a 10 acre site is counted as 20 acres of treatment area.</b></p> <p>Footnote 2: Calculations include the linear extent of the application made along the water's edge adjacent to: (i) surface waters and (ii) conveyances with a hydrologic surface connection to surface waters at the time of pesticide application. <b>For calculating annual treatment totals, count each pesticide application activity or area only once. For example, treating both sides of a 10-mile ditch twice a year is equal to 10 miles of water treatment area.</b></p>	<p>EPA - Appendix A: Annual Treatment Area Threshold - <b>For calculating annual treatment areas for Mosquitoes and Other Flying Insect Pest Control and Forest Canopy Pest for comparing with any threshold in Table 1-1, count each pesticide activity to a treatment area (i.e. that area where a pesticide application is intended to provide pesticidal benefits within the pest management area) as a separate area treated. For example, applying pesticides three times a year to the same 3,000 acre site should be counted as 9,000 acres of treatment area</b> for purposes of determining if such an application exceeds an annual treatment area threshold. The treatment area for these two pesticide use patterns is additive over the calendar year.</p> <p><b>For calculating annual treatment areas for Weed and Algae Control and Animal Pest Control for comparing with any threshold in Table 1-1, calculations should include either the linear extent of or the surface area of waters for applications made to Waters of the United States or at water's edge adjacent to Waters of the United States. For calculating the annual treatment area, count each treatment area only once, regardless of the number of pesticide application activities performed on that area in a given year.</b> Also, for linear features (e.g., a canal or ditch), use the length of the linear feature whether treating in or adjacent to the feature, regardless of the number of applications made to that feature during the calendar year. For example, whether treating the bank on one side of a ten-mile long ditch, banks on both sides of the ditch, and/or water in that ditch, the total treatment area is ten miles for purposes of determining if an NOI is required to be submitted. Additionally, if the same 10 miles is treated more than once in a calendar year, the total area treated is still 10 miles for purposes of comparing with any threshold in Table 1-1. The treatment area for these two pesticide use patterns is not additive over the calendar year.</p>
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- It was suggested that it is confusing to have two different methods of calculation of treatment areas for determination of exceedance of threshold limits. It should be the same.
- What is the difference between a ditch that is dry and one that has water in it? *Staff Response: In regard to Forestry, with a mature stand of trees, you cannot see where the water is, you would need to count all of the area as part of the treatment area. With a juvenile stand of trees with the proper buffers in place, then you would exclude those areas (waters that are buffered out) from your calculations. The group is talking about two different categories of treatment: terrestrial spraying and forestry canopy pest control versus treatment of a ditch which falls under aquatic pest (weed pesticide) control. If your intention is to spray directly that ditch, which is dry at the time of application then you don't count that area as part of the permit treatment threshold because there is no discharge to state waters and therefore you don't need coverage under the permit. As a practical matter however, those same ditches sometimes do contain water, and you are trying to determine whether you will be exceeding the threshold then they probably should be included in your threshold calculations.*

- *Staff Comment: What we are hearing from the group is that we need to make the calculations consistent. There appears to be agreement that for linear treatments that the treatment area should only be counted as one application and that we should leave the adulticide versus larvicide factor out of it. Since before we were counting the area multiple times is it appropriate to reduce the threshold levels? If we were to drop the threshold (i.e., cut in half) would we then require more applicators to fall under the permit requirements?*
- The Forestry representative noted that since forestry only treats one time anyhow that a reduction of the threshold limits would be a negative to their treatment programs. There may not be a repeat treatment for 10 years. A reduction of the threshold is likely to impact a larger number of applicators.
- A reduction in threshold would also adversely impact the Gypsy Moth folks and those doing Power line treatments. They would be treating an area only 3; 5; 7 years, not annually.
- If you are a pesticide applicator then you are keeping records of each and every application. Therefore the ditch line treatment should be counted every time that it is treated not just once annually.
- It was noted that the way the current general permit is set up that it is fairly easy for everyone to comply with the requirements. It is when you start changing the requirements and it starts costing to comply that is when this calculation of thresholds becomes more important.
- Everybody is already keeping records to satisfy VDACS.
- A reduction in the threshold limits is likely to impact the smaller businesses the most since the larger organizations and local governments are going to have to have coverage under the permit no matter what.
- If you stay under the threshold then you never have to do a PDMP.
- The difference in calculation methods can be confusing. They should be consistent.
- There is a difference between applications and treatments. A treatment prescription can require multiple applications to successfully treat an area. *Staff Comment: The current permit allows the applicator to either report the total surface area of a lake that is being treated or the actual treatment area if only a portion of the lake is being treated or perimeter of the lake, whichever is easier for the applicator to report.*
- Need to look at thresholds that are applicable in Virginia.
- The requirements should be based on the application areas and not the size of the business. It should be based on thresholds.
- It was noted that having the PDMP Template available was very useful.
- *Staff Comment: We will likely revise our definitions to match those in the EPA GP, unless there are ones that are specific to Virginia's program.* It was noted that there may be some definitions in the EPA GP that don't need to be included in the Virginia GP.
- *Staff Comment: The EPA GP contains definitions of "applicator" and "decision maker" that need to be considered for inclusion. The EPA GP also uses the term "pest management measures" in lieu of "control measure" that was included in their draft. That switch of terminology will need to be fixed in the DEQ GP.*

<p>EPA GP - "Applicator" - any entity who performs the application of a pesticide or who has day-to-day control of the application (i.e., they are authorized to direct workers to carry out those activities) that results in a discharge to Waters of the United States.</p>
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<p>EPA GP - "Decision-maker" - any entity with control over the decision to perform pesticide applications including the ability to modify those decisions that result in a discharge to Waters of the United States.</p>
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EPA GP - "Decision-maker Who is or Will be Required to Submit an NOI" - any Decision-maker covered under the PGP who knows or should have known that an NOI will be required for those discharges beginning January 12, 2012. Excluded from this definition are those activities for which an NOI is required based solely on that Decision-maker exceeding an annual treatment area threshold.
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DEQ GP - "Control measure" means any best management practice (BMP) or other method used to meet the effluent limitations in this permit. Control measures must comply with label directions and relevant legal requirements. Additionally, control measures could include other actions, including nonchemical tactics (e.g., cultural methods), that a prudent operator would implement to reduce or eliminate discharges resulting from pesticide application to surface waters to comply with the effluent limitations of this permit.	EPA GP - "Pest Management Measure" - any practice used to meet the effluent limitations that comply with manufacturer specifications, industry standards and recommended industry practices related to the application of pesticides, relevant legal requirements and other provisions that a prudent Operator would implement to reduce and/or eliminate pesticide discharges to waters of the United States.
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- The DGIF representative raised some concerns regarding the definition of "pest". Under the definition of "Pest" in the DEQ GP the clause of concern is: "Any organism classified as endangered, threatened, **or otherwise protected** under federal or state laws shall not be deemed a pest for the purposes of this chapter." The phrase "or otherwise protected" raises some possible issues with DGIF rules and regulations. This may just be a matter of wording. Basically anything that you can't get hunting or fishing licenses for or special permits to kill or that is not on DGIF's defined nuisance species list is protected by state law. Unsure whether DGIF has worked with VDACS to develop a list of identified pests that would not be protected by state law. DGIF has jurisdiction for protection of insects unless they are listed as a nuisance species. Anything else technically falls under DGIF jurisdiction and is technically protected by state law. Don't know if there is a defined list somewhere that excludes certain nuisance species from this general protection. Also, don't know if the VDACS permit would be the permit that is required to eliminate that state law oversight. There have been special use needs exemptions to cover application of a pesticide for uptake by an animal. In those cases, a letter from DGIF to VDACS is required to allow that use. This clause may need to be reworded. *VDACS Response: This definition is consistent with what is in the Pesticide Control Act.*

**ACTION ITEM:** Amy Ewing with DGIF will research this issue with DGIF staff and review state law to determine if there is an identified list of nuisance species that needs to be considered for the purposes of this general permit and whether the phrase "or otherwise protected" is appropriate or needs to be revised and will get that information back to Bill Norris for distribution to the TAC.

DEQ GP - "Operator" means, for the purposes of this chapter, any person involved in the application of a pesticide that results in a discharge to state waters that meets either or both of the following two criteria: 1. The person has <b>control over the financing for</b> the decision to perform pesticide applications that result in discharges, including the ability to modify those decisions; or 2. The person has day-to-day control of or performs activities that are necessary to ensure compliance with the permit (e.g., they are authorized to direct workers to carry out activities required by the permit or perform such activities themselves.	EPA GP - "Operator" - for the purpose of this permit, means any entity associated with the application of pesticides which results in a discharge to Waters of the United States that meets either of the following two criteria: (i) any entity who performs the application of a pesticide or who has day-to-day control of the application (i.e., they are authorized to direct workers to carry out those activities); or (ii) any entity with control over the decision to perform pesticide applications including the ability to modify those decisions.
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- It was noted that the difference between the two definitions is related to the "control over the financing for" statement contained in the DEQ GP. *Staff Comment: This difference allows for those entities that hire someone to do the applications.*
- *Staff Comment: The real difference between the two permits is the in the identification of responsibilities for the applicators and operators and decision makers that are spelled out in*

the EPA GP.

- The group agreed that with the inclusion of the definitions for "applicator" and "decision-makers" from the EPA GP that the responsibilities of those individuals also need to be included in the revised DEQ GP.

EPA GP - Applicators' Responsibilities - To meet the effluent limitations of this permit, all Applicators must implement Part 2.1 to minimize the discharges of pesticides to Waters of the United States from the application of pesticides, through the use of Pest Management Measures, as defined in Appendix A.

To the extent not determined by the Decision-maker, use only the amount of pesticide and frequency of pesticide application necessary to control the target pest, using equipment and application procedures appropriate for this task.

Maintain pesticide application equipment in proper operating condition, including requirement to calibrate, clean, and repair such equipment and prevent leaks, spills, or other unintended discharges.

Assess weather conditions (e.g., temperature, precipitation and wind speed) in the treatment area to ensure application is consistent with all applicable federal requirements.

EPA GP - Decision-makers' Responsibilities For All Decision-makers:

To meet the effluent limitations in Part 2.2, all Decision-makers must minimize the discharge of pesticides to Waters of the United States from the application of pesticides, through the use of Pest Management Measures, as defined in Appendix A.

To the extent the Decision-maker determines the amount of pesticide or frequency of pesticide application, the Decision-maker must use only the amount of pesticide and frequency of pesticide application necessary to control the target pest.

EPA GP - Decision-Maker's Responsibilities: For Any Decision-maker Who is or Will be Required to Submit an NOI:

To meet the effluent limitations of this permit, prior to pesticide application, any Decision-maker is or will be required to submit an NOI as required in Part 1.2.2, except those Decision-makers that will need to submit an NOI only because they discharge to Waters of the United States containing NMFS Listed Resources of Concern and that also comply with provisions in Part 1.6, must also implement Parts 2.2.1 - 2.2.4 to minimize the discharge of pesticides to Waters of the United States from the application of pesticides, through the use of Pest Management Measures, as defined in Appendix A.

- It was noted that inclusion of the distinction of responsibilities in the GP would help to clear up a lot of confusion that currently exists about who is responsible for what. One of the most difficult aspects of this program has been explaining the difference in responsibilities between operators and applicators and decision-makers. It should not be the responsibility of the applicator to be in charge of the Integrated Pest Management Plans. This should be the responsibility of the decision-maker.
- *Staff Comment: During the first TAC, there was a general consensus that everyone should be required to do IPM. Under the EPA GP, only the larger entities are required to do an IPM.*
- Landowners base their decisions on dollars and cents not necessarily on what is recommended as a part of an Integrated Pest Management Plan.
- It is usually less expensive to apply pesticides rather than being more environmentally friendly.
- *Staff Comment: The requirement is for the use of Integrated Pest Management to be considered. You need to be able to educate your clients on the recommendations of an Integrated Pest Management Plan approach and options that could be taken and then have the landowner make the decision. At least that way the recommendations have been made and considered, even though cost may ultimately determine the approach that is taken by the landowner.*
- There is a real need to educate the public on what "Integrated Pest Management" actually is.
- This GP regulates the applicator not the homeowner. *Staff Comment: The only requirement of the landowner in the permit is that they have to consider IPM; it doesn't require them to*

*implement it. Can't put the burden on the applicator to educate the landowner. The responsibility is that IPM be considered. The applicator can make any number of recommendations but the landowner/client makes the ultimate decision.*

- *Staff Comment: If a homeowners association or an entity does the pesticide application themselves and they are under the threshold, the only requirement is for them to read the permit and note the things that you need to consider and need to follow label directions, there are no documentation requirements. In some cases they may not even know that there is a permit that is necessary and they may not know what Integrated Pest Management is.*
- *Could the recommendations in the form of proposals that applicators provide to their clients or potential clients meet these "documentation" requirements? These could serve as written documentation of the types of activities that are recommended for these types of problems. Staff Comment: Isn't it even broader than that, as long as you have documented within your Pesticide Discharge Management Plan (PDMP) that these are the types of recommendations that are normally made and these are the types of things that are being implemented as part of an Integrated Pest Management Plan (IPM) then you have met the requirements of the GP. We are asking what your approach is not what you are doing on every specific site.*
- *Based on these open discussions it is evident that technically it is the responsibility of the applicator to implement and recommend Integrated Pest Management.*
- *Staff Comment: From DEQ's perspective you are meeting the requirements of the permit through the Pesticide Discharge Management Plan (PDMP). As long as one entity has a PDMP then the requirements of the permit are being met. From a liability perspective, you would look back at what was included in the PDMP. The question posed to homeowners if there was an issue would be whether they had "considered" any of the other options or recommendations contained in the PDMP. If there was a problem we would be looking at the application and whether FIFRA requirements were being followed. The question is whether you are in violation of the permit or not? The requirements for everything you need to meet are written in the permit. The last TAC agreed that everyone should practice Integrated Pest Management. From DEQ's perspective, it is good that the responsibility is "Joint and Severable". You both are responsible. The homeowner has the responsibility to get a reputable applicator that knows what they are doing and is applying pesticides properly. There is more of responsibility put on the homeowner to not just to go with the lowest priced proposal. The applicator is putting down the pesticides; there is a responsibility that they are doing that work properly and according to the permit and VDAC label requirements.*
- *How will these homeowners know what their responsibilities are? A lot of people don't know about the permit requirements or their responsibilities. Staff Response: Through outreach efforts (i.e., Cooperative Extension; DEQ staff presentations; Applicator programs, etc.).*
- *It was noted that the DEQ Permit states that the operator shall implement IPM.*

DEQ GP - "9VAC25-800-60. General permit. Part I Effluent Limitations, Monitoring Requirements, and Special Conditions

A. Effluent limitations. 1. Technology-based effluent limitations...

b. Integrated pest management (IPM) practices. The operator **shall** implement integrated pest management practices to ensure that discharges resulting from the application of pesticides to surface waters are minimized..."

- *Staff Response: Yes, it does say "shall" but there is a wide range of IPM practices in what one could implement. There are no requirements as to what one would implement. The reason that "shall" was included was a general consensus by the last TAC that "everyone" should be considering integrated pest management practices when they are applying pesticides.*

- It was suggested that the requirement might be clearer if it was reworded to read: "shall consider and implement to the extent possible. There may be economic factors which prevent an entity from choosing to implement one IPM practice over another.
- The definition of "Integrated pest management" accounts for economic factors.

<p>DEQ GP - "Integrated pest management " or "IPM" means an effective and environmentally sensitive approach to pest management that relies on a combination of common-sense practices. IPM uses current, comprehensive information on the life cycles of pests and their interaction with the environment. This information, in combination with available pest control methods, is used to manage pest damage by the most economical means, and with the least possible hazard to people, property, and the environment.</p>
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- *Staff Comment: The term "shall" means that you have to use integrated pest management practices. The phrase "shall consider" means that these are the "topics" that you need to look at; these are what is available, but the list is not all inclusive.*
- There is a need for educational materials for homeowners to look at in order to know what needs to be considered as part of an Integrated Pest Management Plan for a treatment area. It was noted that there a number of materials available to help the homeowner/landowner better understand the IPM process.
- *Staff Comment: As a Decision-maker why can't I rely on the applicator? You can take the approach and be involved in the process or you can rely on the expertise and experience of the applicator to make sure that Integrated Pest Management Practices are considered to ensure that you are in compliance with the permit. It doesn't get you out of responsibility if there is a problem, but if you doing what you are supposed to be doing then the chances of a problem are very small.*
- It was suggested that the phrase "shall consider" is a better than "shall implement". "Shall implement" means that you are going to do something no matter what. "Shall consider" means that you are at least going to give those options some thought.
- *Staff Comment: EPA pulled the term "Integrated Pest Management" from their permit. They now use the term "Pest Management Measures".*

<p>DEQ GP - "Integrated pest management " or "IPM" means an effective and environmentally sensitive approach to pest management that relies on a combination of common-sense practices. IPM uses current, comprehensive information on the life cycles of pests and their interaction with the environment. This information, in combination with available pest control methods, is used to manage pest damage by the most economical means, and with the least possible hazard to people, property, and the environment.</p>	<p>EPA GP - "Pest Management Measure" - any practice used to meet the effluent limitations that comply with manufacturers specifications, industry standards and recommended industry practices related to the application of pesticides, relevant legal requirements and other provisions that a prudent Operator would implement to reduce and/or eliminate pesticide discharges to Waters of the United States.</p>
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- It was noted that based on our discussions today and our experience in the field, it is evident that a large majority of people in the Commonwealth don't know what an IPM is. And to expect them understand that there is a permitting process is a leap of faith. If these localities or entities hire an applicator to develop a proposal with options to address their problems and allowing the locality of entity to say "NO" to various options, then the applicator has met their requirements of the Pesticide Discharge Management Plan (PDMP) as required by the general permit.
- Additional language for the GP would be fine to clarify the process as long as any revised language doesn't require the applicator to develop Individual Pest Management Plans (IPMs) for every site they are working. Applicators normally have a broad PDMP that addresses the process and options for each type of application not specifically for every application site.

These broad PDMPs identify what is normally done in various scenarios and application types. Individual facts sheets could be used as part of the outreach efforts to educate the landowners about the program and the options that are available to address their problems and concerns.

- The phrases "shall implement" and "shall consider" should be looked at to identify the benefits of using one instead of the other. Whatever we do, it needs to be practical and enforceable.
- The group discussed the potential for suits to be filed because of the use of the word "shall", which means you will do something. If we just need to think about something to see whether it is appropriate for a specific application site, then we need to make it clear that we just need to consider something. The responsibilities need to be spelled out.

**CONSENSUS:** The group agreed that the language related to "shall" implement IPM or "shall consider" the use of IPM needs to be clarified and the responsibilities spelled out for each entity and/or applicator.

## 5. PGP Regulation Review by Section - Comparison to EPA General Permit (Fred Cunningham; Eleanore Daub; Burt Tuxford; Carl Thomas) - Discussion Topic: Definitions (DEQ - 9VAC25-800-10/EPA GP - Appendix A) Continued:

Eleanore Daub started the afternoon's discussions by noting that we will not be going over every definition in the General Permit, but will make changes where appropriate to make them compatible with changes that EPA has made in their definition section and will provide those revisions to the group for review prior to the next meeting of the TAC.

She briefly reviewed the "use" categories that are eligible for coverage under the General Permit.

<p>DEQ GP - 9VAC25-800-30. Authorization to discharge. B. Eligibility. This permit is available to operators who discharge to surface waters from the application of (i) biological pesticides, or (ii) chemical pesticides that leave a residue (hereinafter collectively "pesticides"), when the pesticide application is for one of the following pesticide use patterns:</p> <ol style="list-style-type: none"> <li>1. Mosquito and other flying insect pest control - to control public health/nuisance and other flying insect pests that develop or are present during a portion of their life cycle in or above standing or flowing water. Public health/nuisance and other flying insect pests in this use category include, but are not limited to, mosquitoes and black flies.</li> <li>2. Weed, algae, and pathogen control - to control invasive or other nuisance weeds, algae and pathogens in surface waters.</li> <li>3. Animal pest control - to control invasive or other animal pests in surface waters.</li> <li>4. Forest canopy pest control - application of a pesticide to the forest canopy to control the population of a pest species (e.g., insect or pathogen) where to target the pests effectively a portion of the pesticide unavoidably will be applied over and deposited to surface water.</li> </ol>	<p>EPA GP - 1.1 Eligibility 1.1.1 Activities Covered This permit is available to Operators who discharge to Waters of the United States from the application of (1) biological pesticides or (2) chemical pesticides that leave a residue (collectively called pesticides), when the pesticide application is for one of the following pesticide use patterns:</p> <ol style="list-style-type: none"> <li>a. Mosquito and Other Flying Insect Control - to control public health/nuisance and other flying insect pests that develop or are present during a portion of their life cycle in or above standing or flowing water. Public health/nuisance and other flying insect pests in this use category include mosquitoes and black flies.</li> <li>b. Weed and Algae Pest Control - to control weeds, algae, and pathogens that are pests in water and at water's edge, including ditches and/or canals.</li> <li>c. Animal Pest Control - to control animal pests in water and at water's edge. Animal pests in this category include fish, lampreys, insects, mollusks, and pathogens.</li> <li>d. Forest Canopy Pest Control - application of a pesticide to a forest canopy to control the population of a pest species (e.g., insect or pathogen) where, to target the pests effectively, a portion of the pesticide unavoidably will be applied over and deposited to water.</li> </ol>
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She noted that the wording of these activities was changed in our GP to reflect what we thought would be EPA's language, but when the EPA GP was issued, the wording in not exactly the same. The EPA wording of "mosquito and other flying insect control" does not include the phrase "but not limited to".

The wording in the EPA GP for "weed, algae, and pathogen control" does not include "pathogen control" but does include it in the description. The EPA GP also includes references to "ditches and/canals" which is not included in the DEQ GP. The EPA GP wording for "animal pest control" does not include the term "invasive". The EPA GP includes examples for this pesticide use pattern whereas the DEQ GP does not. The wording of "forestry canopy pest control" is the same in both GPs.

- It was recommended that the wording of the DEQ GP "pesticide use patterns" should not be changed. Would not like to see the insertion of language that might limit the "use category".
- *Staff Comment: The DEQ GP specifically includes reference to the "discharge to surface waters" to clarify what activities fall under this General Permit.*

The group discussed "stormwater detention" ponds and whether they would be considered part of the Clean Water Act. There was some confusion related to the status of "stormwater ponds" under this general permit. The group noted that where possible that stormwater ponds should be covered under this permit.

**ACTION ITEM:** DEQ staff will research the issue of "stormwater ponds" as treatment works and how they are handled under the DCR program and what they require.

- *Staff Comment: If a stormwater pond is doing what is required under the DCR program then it is not "surface water" it is considered a "treatment unit", and is covered under the DCR permit and does not need coverage under the DEQ GP. If it is not considered a "treatment unit" by DCR then it is covered under the Clean Water Act and needs coverage under this GP.*

The group discussed the inclusion or exclusion of "ditches and canals" as "surface waters".

**ACTION ITEM:** DEQ staff will clarify when and whether "ditches and canals" meets the definition of "surface waters".

## **6. PGP Regulation - Comparison of DEQ General Permit to EPA General Permit - (Fred Cunningham; Elleanore Daub; Burt Tuxford; Carl Thomas):**

Elleanore Daub started the discussions of the DEQ General Permit language and the differences between the DEQ GP and the EPA GP.

With regard to the "Technology-based effluent limitations", the DEQ GP spells out the items that all operators are required to do to minimize the discharge of pollutants, while the EPA GP identifies the responsibilities of the applicators as well as those for Decision-makers.



<p>DEQ GP - 9VAC25-800-60. General Permit. Part I. A. Effluent limitations.</p> <p>1. Technology-based effluent limitations. To meet the effluent limitations in this permit, the operator shall implement site-specific control measures that minimize discharges of pesticides to surface waters.</p> <p>a. Minimize pesticide discharges to surface waters. All operators shall minimize the discharge of pollutants resulting from the application of pesticides, and:</p> <p>(1) Use the lowest effective amount of pesticide product per application and optimum frequency of pesticide applications necessary to control the target pest, consistent with reducing the potential for development of pest resistance without exceeding the maximum allowable rate of the product label;</p> <p>(2) No person shall apply, dispense, or use any pesticide in or through any equipment or application apparatus unless the equipment or apparatus is in sound mechanical condition and capable of satisfactory operation...</p> <p>(3) All pesticide application equipment shall be equipped with cut-off valves and discharge orifices to enable the operator to pass over non-target areas without contaminating them...</p>	<p>EPA GP - 2.0 Technology-Based Effluent Limitations.</p> <p>This Part includes technology-based effluent limitations applicable to all Operators, as defined in Appendix A, for any discharges authorized under this permit, with compliance required upon beginning such discharge. All Operators are classified as either "Applicators" or "Decision-makers" as defined in Appendix A, or both. Applicators must perform the tasks identified in Part 2.1 - Applicators' Responsibilities. Decision-makers must perform the tasks identified in Part 2.2 - Decision-makers' Responsibilities. There may be instances when a single entity acts as both an Applicator and a Decision-maker.</p> <p>If an Operator's discharge of pollutants results from the application of pesticide that is being used solely for the purpose of "pesticide research and development," as defined in Appendix A, the Operator must use such pesticide consistent with any applicable research plan and experimental use permit.</p> <p>As stated in Part 1.5, this permit requires all Operators to comply with all other applicable federal or state laws and regulations that pertain to application of pesticides by the Operator.</p>
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<p>EPA GP - 2.1 Applicators' Responsibilities - To meet the effluent limitations of this permit, all Applicators must implement Part 2.1 to minimize the discharge of pesticides to Waters of the United States from the application of pesticides, through the use of Pest Management Measures, as defined in Appendix A.</p> <p>2.1.1 - To the extent not determined by the Decision-maker, use only the amount of pesticide and frequency of pesticide application necessary to control the target pest, using equipment and application procedures appropriate for this task.</p> <p>2.1.2 - Maintain pesticide application equipment in proper operating condition, including requirement to calibrate, clean, and repair such equipment and prevent leaks, spills, or other unintended discharges.</p> <p>2.1.3 - Assess weather conditions (e.g. temperature, precipitation and wind speed) in the treatment area to ensure application is consistent with all applicable federal requirements.</p>
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<p>EPA GP - Decision-makers' Responsibilities For All Decision-makers:</p> <p>To meet the effluent limitations in Part 2.2, all Decision-makers must minimize the discharge of pesticides to Waters of the United States from the application of pesticides, through the use of Pest Management Measures, as defined in Appendix A.</p> <p>To the extent the Decision-maker determines the amount of pesticide or frequency of pesticide application, the Decision-maker must use only the amount of pesticide and frequency of pesticide application necessary to control the target pest.</p> <p>EPA GP - Decision-Maker's Responsibilities: For Any Decision-maker Who is or Will be Required to Submit an NOI:</p> <p>To meet the effluent limitations of this permit, prior to pesticide application, any Decision-maker is or will be required to submit an NOI as required in Part 1.2.2, except those Decision-makers that will need to submit an NOI only because they discharge to Waters of the United States containing NMFS Listed Resources of Concern and that also comply with provisions in Part 1.6, must also implement Parts 2.2.1 - 2.2.4 to minimize the discharge of pesticides to Waters of the United States from the application of pesticides, through the use of Pest Management Measures, as defined in Appendix A.</p>
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- *Staff Comment: The items that are "applicator" specific are already in the DEQ GP except for the requirement to "assess weather conditions" (2.1.3).*
- It was noted that many product labels include "weather specific" information and requirements if that is a factor. If the applicator is reading and following the label then this is already being done. Some labels can be very specific with regard to recommendations related to wind speed and temperature, etc. The applicator, using a product, needs to read and follow the label instructions and restrictions, if any are noted.

- *Staff Comments: Staff noted that in addition to reviewing the EPA GP definitions for possible inclusion in the DEQ GP some of the actual EPA General Permit language may also be incorporated into the DEQ GP to clarify the permitting process.*
- It was noted that the group had decided that the language of DEQ GP Part I A 1 b would be changed from: "The operator shall implement integrated pest management..." to "The operator shall consider the use of integrated pest management..."
- *Staff Comments: The EPA General Permit uses the term "pest management measures" instead of "control measures" throughout and does not refer directly to "integrated pest management (IPM)".*
- *Staff Comments: The EPA GP's identification and descriptive language for the four "use categories" (2.2.1; 2.2.2; 2.2.3; & 2.2.4) will be looked at and possible changes may be made to the DEQ GP text (9VAC25-800-60 A.1.b (1) through A.1.b (4)) to better clarify these "use categories".*

<p>DEQ GP - 9VAC25-800-60. General Permit Part I A 2 - Water quality-based effluent limitations. The operator's discharge of pollutants must be controlled as necessary to meet applicable numeric and narrative water quality standards.</p> <p>If at any time the operator becomes aware, or the board determines, that the operator's discharge of pollutants causes or contribute to an excursion of applicable water quality standards, corrective action must be taken as required in Part I D 1 of this permit.</p>	<p>EPA GP - 3.0 Water Quality-Based Effluent Limitations: All Operators must control discharges as necessary to meet applicable numeric and narrative state or tribal water quality standards, for any discharges authorized under this permit, <b>with compliance required upon beginning such discharge.</b></p> <p>If at any time an Operator becomes aware (e.g., through self-monitoring or by notification from the state or tribe, or EPA determines, that the Operator's discharge causes or contributes to an excursion of any applicable water quality standard, the Operator must take corrective action as required in Part 6 and Appendix B, Section B.3, up to and including the ceasing of the discharge, if necessary.</p>
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- *Staff Comment: Is it worth incorporating somehow in what we have the language "upon beginning such discharge" from the EPA GP? It is at that point that the product is being used for something other than its intended purpose that it becomes a "discharge".*
- It would not be a "residue" until it has completed doing its intended purpose.
- The group reviewed the definition of "pesticide residue".

<p>DEQ GP - "Pesticide residue" includes that portion of a pesticide application that has been discharge from a point source to surface waters and no longer provides pesticidal benefits. It also includes any degradates of the pesticide."</p>	<p>EPA GP - "Pesticide Residue" includes that portion of a pesticide application that is discharged from a point source to Waters of the US and no longer provides pesticidal benefits. It also includes any degradates of the pesticide."</p>
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**ACTION ITEM:** Staff will consider the implications of the addition of the phrase "with compliance required upon beginning such discharge" to DEQ's GP in the Water Quality-Based Effluent Limitations as a clarification.

<p>DEQ GP - 9VAC25-800-60 B. Monitoring requirements.</p> <p>1. Monitoring requirements for pesticide applicators.</p> <p>a. The amount of pesticide applied shall be monitored to ensure that the lowest effective amount is used to control the pest, consistent with reducing the potential for development of pest resistance without exceeding the maximum allowable rate of the product label.</p> <p>b. Pesticide application activities shall be monitored to ensure that regular maintenance activities are being performed and that application equipment is in proper operating condition to reduce the potential for leaks, spills, or other unintended discharge of pesticides to surface waters.</p> <p>c. Pesticide application activities shall also be monitored to ensure that the application equipment is in proper operating condition by adhering to any manufacturer's conditions and industry practices and by calibrating, cleaning, and repairing equipment on a regular basis.</p>	<p>EPA GP - "Not included."</p>
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<p>DEQ GP - 9VAC25-800-60 B. Monitoring requirements.</p> <p>2. Visual monitoring assessment requirements for all operators. All operators covered under this permit must conduct a visual monitoring assessment (i.e., spot checks in the area to and around where pesticides are applied) for possible and observable adverse incidents caused by application of pesticides, including, but not limited to the unanticipated death or distress of nontarget organism and disruption of wildlife habitat, recreational or municipal water use.</p> <p>A visual monitoring assessment is only required during the pesticide application when feasibility and safety allow. For example, visual monitoring assessment is not required during the course of treatment when that treatment is performed in darkness as it would be infeasible to note adverse effects under these circumstances. Visual monitoring assessments of the application site must be performed:</p> <p>a. During any post-application surveillance or efficacy check that the operator conducts, if surveillance or an efficacy check is conducted.</p> <p>b. During any pesticide application, when considerations for safety and feasibility allow.</p>	<p>EPA GP - 4.0 Monitoring</p> <p>4.1 Visual Monitoring Requirements for Pesticide Applicators. During any pesticide application with discharge authorized under this permit, all Applicators must, when considerations for safety and feasibility allow, visually assess the area to and around where pesticides are applied for possible and observable adverse incidents, as defined in Appendix A, caused by application of pesticides, including the unanticipated death or distress of non-target organisms and disruption of wildlife habitat, recreational or municipal water use.</p> <p>4.2 Visual Monitoring Requirements for all Operators. During any Operator post-application, surveillance of any pesticide application with discharges authorized under this permit, all Operators must visually assess the area to and around where pesticides were applied for possible and observable adverse incidents, as defined in Appendix A, caused by application of pesticides, including the unanticipated death or distress of non-target organisms and disruption of wildlife habitat, recreational or municipal water use.</p>
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- *Staff Comments - The monitoring requirements enumerated in B 1 of the Monitoring requirements in the DEQ GP seem to be duplicative and are already included as part of the "effluent limitations" in Part I A 1 a of the DEQ GP. It was noted by staff that EPA had eliminated this duplication in their GP by deleting these requirements from this section of their GP. Staff suggested that these requirements should be deleted from this section.*
- The group agreed that this was duplicative language and could be removed.
- The VDACS representative noted that these requirements are already included in the VDACS requirements so therefore are covered without having to be repeated in the DEQ GP.
- *Staff Comment: Everything that is included in the DEQ GP as B 2 (Monitoring Requirements) is included either in 4.1 or 4.2 of the EPA GP.*
- *Staff Comment: In the DEQ GP visual monitoring is required for all "operators" whether "decision makers" or "applicators". Whoever is out there applying pesticides should be monitoring.*
- The group discussed the timing components included in the EPA GP section on monitoring

and agreed that the wording of the DEQ GP was preferable.

- The purpose of the visual monitoring requirement is to see if anything is strikingly different on the site. Is there anything that, from a visual perspective, that went wrong?

<p>DEQ GP -9VAC25-800-60 C - Pesticide discharge management plan (PDMP). Any operator applying pesticides and exceeding the annual application thresholds established in 9VAC25-800-30 C must prepare a PDMP for the pest management area. The plan must be kept up-to-date thereafter for the duration of coverage under this general permit, even if discharges subsequently fall below the annual application threshold levels. The operator applying pesticides shall develop a PDMP consistent with the deadline outlined in Table I-1 below.</p>	<p>EPA GP - 5.0 Pesticide Discharge Management Plan Any Decision-maker who is or will be required to submit an NOI, as required in Part 1.2.2, and is a large entity, as defined in Appendix A, must prepare a Pesticide Discharge Management Plan (PDMP) by the time the NOI is filed, with two exceptions (for which a PDMP is not required to be developed):</p> <ul style="list-style-type: none"> <li>- Any application is made in response to a Declared Pest Emergency Situation, as defined in Appendix A; or</li> <li>- Any Decision-maker that is required to submit an NOI solely because their application results in a point source discharge to Waters of the United States containing NMFS Listed Resources of Concern, as defined in Appendix A.</li> </ul>								
<p>Table I-1. Pesticide Discharge Management Plan Deadline</p> <table border="1"> <thead> <tr> <th>Category</th><th>PDMP Deadline</th></tr> </thead> <tbody> <tr> <td>Operators who know prior to commencement of discharge that they will exceed an annual treatment area threshold identified in 9VAC25-800-30 C for that year.</td><td>Prior to first pesticide application covered under this permit.</td></tr> <tr> <td>Operators who do not know until after commencement of discharge that they will exceed an annual treatment area threshold identified in 9VAC25-800-30 C for that year.</td><td>Prior to exceeding an annual treatment areas threshold.</td></tr> <tr> <td>Operators commencing discharge in response to a declared pest emergency situation as defined in 9VAC25-800-10 that will cause the operator to exceed an annual treatment area threshold.</td><td>No later than 90 days after responding to declared pest emergency situation.</td></tr> </tbody> </table>		Category	PDMP Deadline	Operators who know prior to commencement of discharge that they will exceed an annual treatment area threshold identified in 9VAC25-800-30 C for that year.	Prior to first pesticide application covered under this permit.	Operators who do not know until after commencement of discharge that they will exceed an annual treatment area threshold identified in 9VAC25-800-30 C for that year.	Prior to exceeding an annual treatment areas threshold.	Operators commencing discharge in response to a declared pest emergency situation as defined in 9VAC25-800-10 that will cause the operator to exceed an annual treatment area threshold.	No later than 90 days after responding to declared pest emergency situation.
Category	PDMP Deadline								
Operators who know prior to commencement of discharge that they will exceed an annual treatment area threshold identified in 9VAC25-800-30 C for that year.	Prior to first pesticide application covered under this permit.								
Operators who do not know until after commencement of discharge that they will exceed an annual treatment area threshold identified in 9VAC25-800-30 C for that year.	Prior to exceeding an annual treatment areas threshold.								
Operators commencing discharge in response to a declared pest emergency situation as defined in 9VAC25-800-10 that will cause the operator to exceed an annual treatment area threshold.	No later than 90 days after responding to declared pest emergency situation.								
<p>The PDMP does not contain effluent limitations; the limitations are contained in Parts I A 1 and I A 2 of the permit. The PDMP documents how the operator will implement the effluent limitations in Parts I A 1 and I A 2 of the permit, including the evaluation and selection of control measures to meet those effluent limitations and minimize discharges. In the PDMP, the operator may incorporate by reference any procedures or plans in other documents that meet the requirements of this permit. If other documents are being relied upon by the operator to describe how compliance with the effluent limitations in this permit will be achieved, such as pre-existing integrated pest management (IPM) plan, a copy of any portions of any documents that are being used to document the implementation of the effluent limitations shall be attached to the PDMP. The control measures implemented must be documented and the documentation must be kept up to date.</p>	<p>The PDMP does not contain effluent limitations; the effluent limitations are specified in Parts 2 and 3 of the permit. The PDMP documents how Decision-makers will implement the effluent limitations in Parts 2 and 3 of the permit, including the evaluation and selection of Pest Management Measures to meet those effluent limitations in order to minimize discharges. In the PDMP, Decision-makers may incorporate by reference any procedures or plans in other documents that meet the requirements of this permit. If Decision-makers rely upon other documents to comply with the effluent limitations in this permit, such as a pre-existing pest management plan, the Decision-maker must attach to the PDMP as copy of any portions of any documents that are used to document the implementation of the effluent limitations.</p>								

- *Staff Comment: The language contained in the EPA GP sections on PDMP has been revised to clarify the requirements. EPA has cleaned up the language and has made it easier to understand. Some of the titles of the sections have been revised to more accurately reflect what is being asked for in the sections of the GP. Some of the titles have been changed but the duties and requirements have remained the same. The new titles seem to go better with*

*what staff was trying to explain in the DEQ GP.*

<p>DEQ GP -</p> <p>1. Contents of the pesticide discharge management plan. The PDMP must include the following elements:</p> <ul style="list-style-type: none"> <li>a. Pesticide discharge management team.</li> <li>b. Pest management area description.</li> <li>c. Control measure description.</li> <li>d. Schedules and procedures. <ul style="list-style-type: none"> <li>(1) Pertaining to control measures used to comply with the effluent limitations in Part I A 1: <ul style="list-style-type: none"> <li>(a) Application rate and frequency procedures.</li> <li>(b) Spill prevention procedures.</li> <li>(c) Pesticide application equipment procedures.</li> <li>(d) Pest surveillance procedures.</li> <li>(e) Assessing environmental conditions procedures.</li> </ul> </li> <li>(2) Pertaining to other actions necessary to minimize discharges: <ul style="list-style-type: none"> <li>(a) Spill response procedures.</li> <li>(b) Adverse incident response procedures.</li> <li>(c) Pesticide monitoring schedules and procedures.</li> </ul> </li> </ul> </li> <li>e. Documentation to support eligibility considerations under other federal laws.</li> <li>f. Signature requirements.</li> </ul>	<p>EPA GP -</p> <p>5.1 Contents of the Pesticide Discharge Management Plan. The PDMP must include the following elements:</p> <ul style="list-style-type: none"> <li>a. Pesticide Discharge Management Team</li> <li>b. Problem Identification</li> <li>c. Pest Management Options Evaluation</li> <li>d. Response Procedures <ul style="list-style-type: none"> <li>1. Spill Response Procedures</li> <li>2. Adverse Incident Response Procedures</li> </ul> </li> <li>e. Documentation to support eligibility considerations under other federal laws</li> <li>f. Signature Requirements.</li> </ul>
<p>DEQ GP - 2. PDMP team. The operator shall identify all the persons (by name and contact information) who compose the team as well as each person's individual responsibilities, including:</p> <ul style="list-style-type: none"> <li>a. Persons responsible for managing pests in relation to the pest management area;</li> <li>b. Persons responsible for developing and revising the PDMP;</li> <li>c. Persons responsible for developing, revising, and implementing corrective actions and other effluent limitation requirements; and</li> <li>d. Persons responsible for pesticide applications.</li> </ul>	<p>EPA GP - 5.1.1 PDMP Team. Decision-makers must identify all the persons (by name and contact information) that compose the team as well as each person's individual responsibilities, including:</p> <ul style="list-style-type: none"> <li>a. Person(s) responsible for managing pests in relation to the pest management area</li> <li>b. Person(s) responsible for developing and revising the PDMP; and</li> <li>c. Person(s) responsible for developing, revising, and implementing corrective actions and other effluent limitations requirements.</li> </ul>

<p>DEQ GP -3. Pest management area description. The operator shall document the following:</p> <ul style="list-style-type: none"> <li>a. Pest problem description. A description of the pest problem at the pest management area shall be documented to include identification of the target pests, source of the pest problem, and source of data used to identify the problems in Parts I a 1 b (1), I A 1 b (2), I A 1 b (3), and I A 1 b (4).</li> <li>b. Action thresholds. The action thresholds for the pest management area shall be described, including a description of how they were determined.</li> <li>c. General service area map. The plan shall include a general service area map that identifies the geographic boundaries of the service area to which the plan applies and location of major surface waters.</li> </ul>	<p>EPA GP - 5.1.2 Problem Identification. Decision-makers must document the following:</p> <ul style="list-style-type: none"> <li>a. Pest problem description. Document a description of the pest problem at the pest management area, including identification of the target pest(s), source(s) of the pest problem, and source of data used to identify the problem in Parts 2.2.1, 2.2.2, 2.2.3, and 2.2.4.</li> <li>b. Action Threshold(s). Describe the action threshold(s) for the pest management area, including data used in developing the action threshold(s) and method(s) to determine when the action threshold(s) has been met.</li> <li>c. General location map. In the plan, include a general location map (e.g. USGS quadrangle map, a portion of a city or county map, or other map) that identifies the geographic boundaries of the area to which the plan applies and location of the Waters of the United States and</li> <li>d. Water quality standards. Document any Tier 3 (Outstanding National Resource Waters) and any water(s) identified as impaired by a substance which either is an active ingredient or a degradate of such an active ingredient.</li> </ul>
<p>DEQ GP - 4. Control measure description. The operator shall document an evaluation of control measures for the pest management area. The documentation shall include the control measures that will be implemented to comply with the effluent limitations required in Parts I A 1 and I A 2. The operator shall include in the description the active ingredients evaluated.</p>	<p>EPA GP - 5.1.3 Pest Management Options Evaluation Decision-makers must document the evaluation of the pest management options, including combination of the pest management options, to control the target pest(s). Pest management options include the following: No action, prevention, mechanical/physical methods, cultural methods, biological control agents, and pesticides. In the evaluation, Decision-makers must consider the impact to water quality, impact to non-target organisms, feasibility, cost effectiveness, and any relevant Pest Management Measures.</p>

<p>DEQ GP - 5. Schedules and procedures. The operator shall document the following schedules and procedures in the PDMP.</p> <p>a. Pertaining to control measures used to comply with the effluent limitations in Part I A 1. The following must be documented in the PDMP:</p> <ol style="list-style-type: none"> <li>(1) Application rate and frequency...</li> <li>(2) Spill prevention...</li> <li>(3) Pesticide application equipment...</li> <li>(4) Pest surveillance...</li> <li>(5) Assessing environmental condition...</li> </ol> <p>b. Pertaining to other actions necessary to minimize discharges resulting from pesticide application. The following must be documented in the PDMP:</p> <ol style="list-style-type: none"> <li>(1) Spill response procedures. At a minimum the PDMP must have: <ol style="list-style-type: none"> <li>(a) Procedures for expeditiously stopping, containing, and cleaning up leaks, spills, and other releases. Employees who may cause, detect, or respond to a spill or leak must be trained in these procedures and have necessary spill response equipment available. If possible, one of these individuals should be a member of the PDMP team.</li> <li>(b) Procedures for notification of appropriate facility personnel, emergency response agencies, and regulatory agencies.</li> </ol> </li> <li>(2) Adverse incident response procedures. At a minimum the PDMP must have: <ol style="list-style-type: none"> <li>(a) Procedures for responding to any incident resulting from pesticide applications; and</li> <li>(b) Procedures for notification of the incident, both internal to the operator's agency or organization and external. Contact information for DEQ, nearest emergency medical facility, and nearest hazardous chemical responder must be in locations that are readily accessible and available.</li> </ol> </li> </ol>	<p>EPA GP</p> <p>5.1.4 Response Procedures. Decision-makers must document the following procedures in the PDMP:</p> <p>a. Spill Response Procedures - At a minimum, Decision-makers must have:</p> <ol style="list-style-type: none"> <li>1. Procedures for expeditiously stopping, containing, and cleaning up leaks, spills, and other releases to Waters of the United States. Employees who may cause, detect, or respond to a spill or leak must be trained in these procedures and have necessary spill response equipment available. If possible, one of these individuals should be a member of the PDMP team.</li> <li>2. Procedures for notification of appropriate facility personnel, emergency response agencies and regulatory agencies.</li> </ol> <p>b. Adverse Incident Response Procedures - At a minimum, Decision-makers must have:</p> <ol style="list-style-type: none"> <li>1. Procedures for responding to any adverse incident resulting from pesticide applications;</li> <li>2. Procedures for notification of the adverse incident, both internal to Decision-maker's agency/organization and external. Contact information for state/federal permitting agency, nearest emergency medical facility, and nearest hazardous chemical responder must be in locations that are readily accessible and available.</li> </ol>
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- Need to look at the differences between the DEQ GP and the EPA GP. The DEQ GP provides a lot of additional details and information that is not currently included or required by the EPA GP.
- Need to also look at the template and the information that is being addressed in another manner (the template) rather than being spelled out in detail in the general permit language.
- Need to look at the required information and details from the perspective of what is already being required through the VDACS label requirements. If the details are already being provided through meeting label requirements then it might not be important to spell out those requirements and require them a second time.

<p>DEQ GP - 9VAC25-800-60 A 1 a (1) Use the lowest effective rate of pesticide product per application and optimum frequency of pesticide applications necessary to control the target pest, consistent with reducing the potential for development of pest resistance without exceeding the maximum allowable rate of the product label;</p>	<p>EPA GP - 2.1 Applicators' Responsibilities - To meet the effluent limitations of this permit, all Applicators must implement Part 2.1 to minimize the discharge of pesticides to Waters of the United States from the application of pesticides, through the use of Pest Management Measures, as defined in Appendix A.</p> <p>2.1.1 - To the extent not determined by the Decision-maker, use only the amount of pesticide and frequency of pesticide application necessary to control the target pest, using equipment and application procedures appropriate for this task.</p> <p>EPA GP - Decision-makers' Responsibilities For All Decision-makers:</p> <p>To meet the effluent limitations in Part 2.2, all Decision-makers must minimize the discharge of pesticides to Waters of the United States from the application of pesticides, through the use of Pest Management Measures, as defined in Appendix A.</p> <p>To the extent the Decision-maker determines the amount of pesticide or frequency of pesticide application, the Decision-maker must use only the amount of pesticide and frequency of pesticide application necessary to control the target pest.</p>
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- The phrase "lowest effective amount" is not included in the EPA GP.
- The area of concern is when a label contains a range of application rates - in that case someone has to make the decision as to what rate of application and at what frequency that pesticide should be applied to control a given pest. That person then becomes the "decision-maker". The VDACS representative noted that pesticide labels are not written to provide the effective rate of application of a product they are written to provide a possible range of applications that have been effective on a certain pest over the reported use of this material. The label provides a range for application rates. It does not identify a specific "effective" application rate.
- There are some instances where larger companies have a set of "approved pesticides" that may not actually be the most effective product to use, but they are spelled out as being required by the RFP document.
- It was suggested that the phrase "lowest effective amount" be retained in the DEQ GP.
- The applicator is ultimately responsible for meeting label requirements.
- It was noted that determination of the "lowest effective amount" is hard to determine - it could be based on a combination of label requirements and experience of the applicator.
- It was noted that the "label requirements" don't stay the same, based on experience of the use of a product the label requirements may change over time - need to keep up with label requirements.
- There needs to be "documentation of procedures" of how an applicator stays up to date on application requirements and effective rates of application.
- It was suggested that it should be simple - leave it at "label rates" not "lowest effective rate". The "lowest effective rate" is hard to determine.

<p>DEQ GP - 9VAC25-800-60 C 6, Signature requirements.</p>	<p>EPA GP - 5.1.6 Signature Requirements. Decision-makers must sign, date and certify the PDMP in accordance with Appendix B, Subsection B.11</p>
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- Details of signature requirements are spelled out in the permit text for the DEQ GP under requirements for PDMP and are specified in Appendix B of the EPA GP.

<p>DEQ GP - 9VAC25-800-60 C 7. PDMP modifications and availability.</p> <p>a. PDMP modifications. The operator shall modify the PDMP whenever necessary to address any of the triggering conditions for corrective action in Part I D 1 a, or when a change in pest control activities significantly changes the type or quantity of pollutants discharged. Changes to the PDMP must be made before the next pesticide application that results in a discharge, if practicable, or if not, as soon as possible thereafter. The revised PDMP must be signed and dated in accordance with Part I C 6.</p> <p>The operator shall review the PDMP at a minimum once per calendar year and whenever necessary to update the pest problem identified and pest management strategies evaluated for the pest management area.</p>	<p>EPA GP - 5.2 Pesticide Discharge Management Plan Modifications.</p> <p>Decision-makers must modify the PDMP whenever necessary to address any of the triggering conditions for corrective action in Part 6.1, or when a change in pest control activities significantly changes the type or quantity of pollutants discharged. Changes to the PDMP must be made before the next pesticide application that results in a discharge, if practicable, or if not, no later than 90 days after any change in pesticide application activities. The revised PDMP must be signed and dated in accordance with Appendix B, Subsection B.11.</p>
<p>DEQ GP - 9VAC25-800-60 C 7. PDMP modifications and availability.</p> <p>b. PDMP availability, The operator shall retain a copy of the current PDMP, along with all supporting maps and documents. The operator shall make the PDMP and supporting information available to the department upon request. The PDMP is subject to the provisions and exclusions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).</p>	<p>EPA GP - 5.3 Pesticide Discharge Management Plan Availability.</p> <p>Decision-makers must retain a copy of the current PDMP, along with all supporting maps and documents, at the address provided in Section III.3 of the NOI. The PDMP and all supporting documents must be readily available; upon request, and copies of any of these documents provided, upon request, to EPA; a State, tribal, or local agency discharges or pesticide applications within their respective jurisdictions; and representatives of the United States Fish and Wildlife Service (FWS) or NMFS. EPA may provide copies of the PDMP or other information related to this permit that is in its possession to members of the public. Any Confidential Business Information (CBI), as defined in 40 CFR part 2, may be withheld from the public provided a claim of confidentiality is properly asserted and documented in accordance with 40 CFR Part 2, however, CBI must be submitted to EPA, if requested, and may not be withheld from those staffs within EPA, FWS, and NMFS cleared for CBI review.</p>

- It looks like EPA did not include the requirement from their draft permit for a "calendar year review".
- Having the reminder for a calendar year review probably helps remind folks that this is an on-going process and that a periodic review is needed and should be done on a regular basis.
- For most PDMP, especially for larger sites - the recommendations are very general in nature.
- A PDMP for a large project is an ongoing project.

#### 7. PGP Regulation - Comparison of DEQ General Permit to EPA General Permit - (Fred Cunningham; Eleanore Daub; Burt Tuxford; Carl Thomas) - Balance of GP Document:

Staff provided a quick overview of the balance of the General Permit document and noted that the balance of the GP contained a lot of discussions on things that were not very likely to occur unless there was an adverse impact, including the following"

- **Corrective Action - DEQ GP (9VAC25-800-60 D 1) - EPA GP: 6.0- 6.6**

- **Recordkeeping and Annual Reporting - DEQ GP (9VAC25-800-60 D 2) - Adverse incident documentation and reporting - EPA GP: 7.0 - 7.7**

- The reporting requirements are different between what is required by the DEQ GP; EPA GP and the VDACS reporting requirements.
- *Staff Comment: There may be required time limits in the Permit Regulation that have created these differences in time lines.*
- It would be helpful if the reporting time lines were consistent with the VDACS reporting requirements to reduce confusion.
- The group supported the idea of making the time limits to mirror the VDACS requirements where possible.
- The difference in record keeping is that VDACS run from the time of application while the DEQ requirement is from the end of the permit.
- The retention requirement is 3 years after the expiration of permit coverage.

**ACTION ITEM:** Staff will research the reporting requirements set by the Permit Regulation regarding possible consideration of different time lines as discussed by the TAC.

## 8. Other topics for the Good of the Group:

Elleanore Daub asked for any other comments from the group regarding today's discussions. The following topic were raised and discussed by the group:

### Thresholds:

- A question was raised about revisiting the threshold limits contained in the DEQ GP based on today's discussions. *Staff Response: Staff will discuss the concept with EPA to determine the feasibility of making changes to the annual threshold limits table.* The group agreed that there should be realistic thresholds.
- May want to look at what other states are using in their GPs.

DEQ - GP Table 1. Annual Treatment Area Thresholds	
Pesticide Use	Annual Treatment
Mosquitoes and Other Flying Insect Pests	6400 acres of treatment area
Weed, Algae, and Pathogen Control	
- In Water	80 acres of treatment area <sup>1</sup>
- At Water's Edge	20 linear miles of treatment area at water's edge <sup>2</sup>
Animal Pest Control	
- In Water	80 acres of treatment area <sup>1</sup>
- At Water's Edge	20 linear miles of treatment area <sup>2</sup>
Forest Canopy Pest Control	6400 acres of treatment area

EPA - GP Table 1-1. Annual Treatment Area Thresholds	
Pesticide Use	Annual Treatment
1.1.1(a) Mosquitoes and Other Flying Insect Pests	6400 acres of treatment area (adulticide treatment)
1.1.1 (b) Weed, Algae, and Pathogen Control	
- In Water	80 acres of treatment area <sup>1</sup> (surface area)
- At Water's Edge	20 linear miles of treatment area at water's edge <sup>2</sup>
1.1.1 (c) Animal Pest Control	
- In Water	80 acres of treatment area <sup>1</sup> (surface area)

- At Water's Edge	20 linear miles of treatment area <sup>2</sup>
1.1.1 (d) Forest Canopy Pest Control	6400 acres of treatment area

NC DWG - GP Table 1. Annual Treatment Area Thresholds	
Pesticide Use	Annual Treatment
Mosquitoes and Other Flying Insect Pests	1500 acres of treatment area (adulticide applications only) <sup>1</sup>
Weed, Algae, and Pathogen Control	
- In Water	1000 acres of treatment area
- At Water's Edge	200 linear miles of treatment area at water's edge
Animal Pest Control	
- In Water	200 acres of treatment area <sup>1</sup>
- At Water's Edge	200 linear miles of treatment area <sup>2</sup>
Forest Canopy Pest Control	10000 acres of treatment area
Intrusive Vegetation Control	500 linear miles

<sup>1</sup>Multiple applications to the same area are added together only for mosquito and other flying pest control.

## 9. Public Comment:

Bill Norris asked for any public comment from the members of the interested parties that did not a chance to speak.

No Public Comment was offered.

## 10. Comments Received Related to Pesticide GP Reissuance:

Bill Norris noted that a number of comments had been received in response to the NOIRA. In addition members of the TAC who could not be in attendance at today's meeting also provided comments to the group.

### Comments received as part of the NOIRA process included the following:

**A. Commenter:** Jim Rindfleisch, Biologist, York County Mosquito Control, County of York, Yorktown, VA; EMAIL: [rindlej@yorkcounty.gov](mailto:rindlej@yorkcounty.gov)

**Comments:** "I'm in receipt of the notice of regulatory action TH-01. Unfortunately, parts of this document are misleading and grossly incorrect. Please refer to page 4 "family impact". The assumption is given that this regulation will not have a direct impact on the institution of the family or family stability. This statement is incorrect and potentially quite dangerous.

To begin, please be advised that mosquitoes have had a profound impact on human affairs and family stability since the first epidemics that ravaged Jamestown in 1607 and continued until the seat of government was moved to Williamsburg to escape repeated epidemics that decimated the first settlers. There have been repeated outbreaks of parasitic, bacterial and viral mosquito-borne diseases throughout Virginia's history that have been attributed to mosquitoes. These disease outbreaks began with the start of recorded history and continue at a lesser rate today.

How the authors of the "family impact" section missed the Norfolk Yellow Fever epidemic effect on Norfolk's population is unknown. During this epidemic 3,200 people died, resulting in the wholesale de-population of Norfolk. Some idea of the destructiveness of the pestilence in Norfolk may be formed

from comparing it with the Great Plague in London. In that plague, one in seventeen died; in Norfolk, *one in three. We know of no pestilence which has ever visited any part of the world that was equal in destruction to that which desolated the City of Norfolk.*

In York County, we receive hundreds of complaints about mosquitoes every year; about the inability to go outside, the inability of children to stand at the bus stops, distraction to outside workers, the inability for people to congregate, about cancelled ball games and other outside activities, the inability to use parks and recreational space and the inability of school children to use ball fields and playgrounds. And when someone gets sick considerable pressure is brought to bear.

The assumption that mosquitoes have no impact on "the family" (human affairs) is sadly shortsighted and grossly misinformed. Unfortunately, this has become a pattern with State agencies attempting to exceed their jurisdictions through paperwork manipulation and absurd interpretation. The adoption of repetitive and nonsensical paperwork procedures and the manipulation of pesticide labels to gain jurisdiction places the public at considerable risk because of the adverse effect on mosquito control in general.

I'm looking forward to your comments and the correction of document TH-01."

**Discussions included the following:** It was noted that this is a very good comment. This is why we do what we do - however don't know if this is where this concern needs to be addressed.

**ACTION ITEM:** DEQ Staff will research the actual purpose and intent of the "Impact on the family" section of the Town Hall document and respond accordingly.

**B. Commenter:** Alan R. Wood, PE, Director, Water & Ecological Resources Services, Environmental Services Division, American Electric Power; Phone (Direct Dial) 614.716.1233; Email: [arwood@aep.com](mailto:arwood@aep.com)

**Comments:** "Thank you for keeping AEP in the loop on these discussions. We did see the announcement posted through the Town Hall notice. Because of the nature of our herbicide use on our transmission and distribution line rights-of-way across the AEP system, we have a somewhat unique opportunity to provide some perspective on this since we are dealing with 10 different state permits and USEPA's permit for our Oklahoma operations. We appreciate the early opportunity to provide input to the permit renewal and will be sending in comments."

**C. Commenter:** Matt Boyce, Virginia Golf Course Superintendents Association (Town Hall Comment)

**Comments:** "My name is Matt Boyce and I'm the Golf Course Superintendent at Princess Anne Country Club in Virginia Beach. I am also the President of the Virginia Golf Course Superintendent's Association representing its five chapters. We appreciate the opportunity to comment on the VPDES General Permit for Discharges Resulting from the Application of Pesticides to Surface Waters. We feel that the Virginia Department of Environmental Quality were very responsible in working with businesses on its advisory panel and listening to the concerns on how this would affect small business. We believe that what could be done within the parameters set by the EPA was given full consideration to have a working solution. That said, we feel strongly that this Permit is redundant

to what is already covered in FIFRA and an undue burden to small business. In challenging times for all, putting additional costs to any business for reasons that already have regulatory guidance and requirements would seem inappropriate."

**D. Commenter:** Amy Ewing, Environmental Services Biologist, VA Dept. of Game and Inland Fisheries, 4010 W. Broad Street, Richmond, VA 23230; Phone: 804.367.2211; Email: [amy.ewing@dgif.virginia.gov](mailto:amy.ewing@dgif.virginia.gov)

**Comments:** "We have no comments in response to the NOIRA for the subject proposed action."

**E. Commenter:** Paul Howe, Executive Director, Virginia Forestry Association

**Comments:** "The only thing I noticed in the NOIRA document was a statement at the end of the "Alternatives" section where it mentions working closely with VDACS. I would urge that such statements also name the Virginia Department of Forestry, and I urge consultation with VDOF personnel as alternatives and regulations are addressed."

**In addition to the comments received as part of the NOIRA process, comments have also been received from members of the TAC who were unable to attend today's meeting. These included:**

- **Alan R. Wood - American Electric Power:** "Electric utilities and other entities that manage significant Rights-of-Way (ROW) find themselves in an odd position under this program. The basic NPDES permit is really aimed at entities that intentionally are spraying pesticides and herbicides into water or along waters edge. Utilities typically are trying to do the exact opposite. We only need to treat terrestrial vegetation. However for practices such as aerial spraying of transmission lines, the ability to accurately start and stop spraying to avoid all waters of the state which cross or are next to a ROW is an impossible task. (It is made only worse by the current debate over what is jurisdictional water at the federal level.) The good news is that we only use chemicals in aerial spraying that are labeled safe for aquatic life, so the inadvertent application is not an environmental problem. Multi-state utilities like AEP find that we are trying to manage this program in 11 different states, each of which takes a different approach. In the simplest form for us is Louisiana where: 1) coverage is automatic, 2) no PDMP is required (just have to follow the state's own pesticide regulations), and 3) no annual report of any kind is required. Similarly, Indiana's program is such that certain entities registered under their pesticide licensing program do not have to file a NOI, and if no NOI is required, neither is a PDMP; and no annual report is required. So clearly states are willing to deviate significantly from EPA's model permit, which we view as overkill. Utility practices and interests aside, keeping a simple program for VA is a must. EPA's complete permit package is 174 pages long. This seems to fly in the face of what the General Permit program is supposed to do...streamline the process for groups of similar discharges. And given that this particular permit applies to scores of entities that have had absolutely no familiarity with the NPDES program makes it even all the more untenable. One aspect of annual reporting for utilities that is a concern is that we do not, and cannot, quantify the amount of chemicals that are actually applied to water. As described above, only a very small amount actually reaches water. And so if a state requires the kind of annual reporting that EPA has used in their federal permit, we would be grossly over-representing this amount. Ideally, what I'd like to see for this program is: Automatic

coverage for utility maintenance of ROWs, regardless of acreage or linear miles of water **(Already doing)**; Use only applicators licensed in the state and comply with those rules in lieu of a separate written PDMP **(NO)**; No detailed annual report (keep is as VA currently has it structured) **(Already doing.)**; & Resist setting up a program as complex as that in EPA's permit **(Already doing.)**.

- **CB Umplette - City of Portsmouth:** "...I sometimes use an algaecide product in which the active ingredient s hydrogen peroxide. The product is applied as a pellet which then dissolves into the water and is active as the H<sub>2</sub>O<sub>2</sub> which then reacts to O<sub>2</sub>. Are products in this class considered as having a residue which would have to be regulated by the rule? As a practical matter, I also use a CuSO<sub>4</sub> product which of course is regulated. I would be happy to have this point clearly identified by the rule. I will be following the GP as it has been outlined, but think that some smaller applicators would like the opportunity to avoid the regulations if the H<sub>2</sub>O<sub>2</sub> products are rules exempt from the provisions of the GP. **(There is no residue for this product.)**

**In addition to the comments noted above, DEQ staff also recently received a complaint that raises the question about the use of dyes. Background materials related to the use of Dyes is included below:**

- The use of dyes could be violation of the State Water Control Law. Here is the applicable code, from the State Water Control law: <http://lis.virginia.gov/cgi-bin/legp604.exe?000+cod+62.1-44.5>. Specifically, number three addresses the alteration of "physical, chemical or biological properties". Water color or clarity would fall under the physical properties.
- **9VAC25-260-20. General criteria.** A. State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life. Specific substances to be controlled include, but are not limited to: floating debris, oil, scum, and other floating materials; toxic substances (including those which bioaccumulate); **substances that produce color**, tastes, turbidity, odors, or settle to form sludge deposits; and substances which nourish undesirable or nuisance aquatic plant life. Effluents which tend to raise the temperature of the receiving water will also be controlled. Conditions within mixing zones established according to 9VAC25-260-20 B do not violate the provisions of this subsection. B. The board may use mixing zone concepts in evaluating

Discussions related to dyes included the following:

- There is one dye that has been approved/registered for use. Aquashade has an EPA registration. VDACS will look into their database to see if any dyes have been registered as a pesticide. Under VDACS regulations, if a dye has been registered as a pesticide then it would fall under this General Permit. If a dye has not been registered and is being used as a pesticide then its use would be in violation of state law. If you are using an unregistered dye for pesticidal purposes then you are using an unregistered pesticide. It could be state-registered.
- You need to look at the definition of pesticides before use of a dye to determine if it is being used for a pesticidal purpose.

- *Staff Comment: The Department had received a complaint about a change in water color in an area stream - upon investigation it was found that a landowner had used a dye upstream of the site - according to state law you cannot change the physical properties of state waters - a change in color would represent a change in the physical properties. We do have permits that limit color. We cannot say it is okay to add dye to a pond. Use of a dye as a pesticide would be against VDACS regulations. If we get a request or complaint we would inform them that they can't use the material, but that if they could use a registered pesticide then it would fall under the General Permit.*
- The group discussed the issue of the use of dyes.
- Dyes have been used in stormwater ponds to provide aesthetic enhancements.

**A question was raised regarding the inclusion or exemption of stormwater pond BMPs from consideration as "state waters" for the purposes of this general permit. Are they considered "treatment works"? Are they exempt from this General Permit?** *Staff Response: Stormwater ponds are not "treatment works" unless they were designed to meet CWA requirements (i.e. they were designed to remove specific pollutant(s) and have ELs associated with them.) They are "surface waters" for the purposes of the State definition.*

**A question was raised about what would happen if this permit was repealed at the federal level.** *Staff responded that they would need to clarify the process if this were to happen - is it likely that depending on how much time remains in the term of the general permit as to whether it would be repealed at the state level or if it would just be allowed to run out.*

#### **11. Next TAC Meeting:**

Staff plans on putting together a track-changes version with "comment boxes" of the DEQ General Permit for consideration by the TAC at the next meeting. The next meeting of the TAC is scheduled for Thursday, August 23, 2012 and will be held from 9:15 AM (Sign-In) - Meeting starts at 9:30 AM to 4:00 PM at the DEQ Piedmont Regional Office Training Room.

#### **12. Meeting Adjournment:**

The meeting was adjourned at approximately 3:00 P.M.